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The Honorable Stanley A. Bastian

7 Attorneys for Defendants

8

9

10 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

11 JUN DAM, individually and on behalf of
12 all others similarly situated,

13 Plaintiff,

14 vs.

15 PERKINS COIE, LLP, a Washington
16 limited liability partnership; PERKINS
17 COIE I, P.C., a Washington corporation
18 registered in California; PERKINS COIE
19 CALIFORNIA, P.C., a California
20 corporation; PERKINS COIE
CALIFORNIA II, P.C., a California
corporation, and LOWELL NESS,
individually,

21 Defendants.

22 No. 2:20-CV-00464

CLASS ACTION

ANSWER

District Judge: Stanley A. Bastian

Courtroom:

Magistrate Judge:

Courtroom:

Complaint Filed: 12/16/20

Trial Date:

23 **I. ANSWER**

24 Perkins Coie LLP; Perkins Coie I, P.C.; Perkins Coie California, P.C.;
25 Perkins California II, P.C.; and Lowell Ness (sometimes referred to collectively as
26 "Perkins") hereby answer the allegations of the Complaint herein as follows:

ANSWER - 1

1 1. States that paragraph 1 purports to summarize the relief sought by
2 Plaintiff and thus does not require a response but, to the extent that any response is
3 required, denies the allegations of paragraph 1, including denying that Perkins has
4 misappropriated any funds whatsoever.

5 2. Denies the allegations of paragraph 2 for lack of information sufficient to
6 form a belief as to their truth or falsity.

7 3. Denies the allegations of paragraph 3, except admits that Perkins Coie
8 LLP conducts some business in the Eastern District of Washington.

9 4. Denies the allegation of paragraph 4, except admits that Perkins Coie
10 LLP has an office in the State of Washington.

11 5. Denies the allegations of paragraph 5 regarding the location and activities
12 of the Jun Dam for lack of information or knowledge sufficient to form a belief as to
13 their truth or falsity and denies any other allegation in paragraph 5.

14 6. Admits that Perkins Coie LLP is a Washington professional limited
15 liability partnership, admits that it has an office in Seattle, Washington, admits that
16 Perkins Coie LLP provides some legal services to clients in the Eastern District of
17 Washington, but otherwise denies the allegations of paragraph 6 for lack of
18 information or knowledge sufficient to form a belief as to their truth or falsity.

19 7. Denies the allegations of paragraph 7.

20 8. Admits the allegations in the first sentence of paragraph 8. Denies the
21 allegations in the second sentence of paragraph 8, but admits that Perkins Coie
22 California, P.C., is a partner in Perkins Coie LLP.

ANSWER - 2

1 9. Denies the allegations of paragraph 9.
2

3 10. Admits that Lowell Ness is a resident and citizen of the State of
4 California, admits that he is a partner in Perkins Coie LLP, admits that Perkins Coie
5 LLP maintains a web page with information relating to Mr. Ness, the contents of
6 which speak for itself, but denies the other allegations of paragraph 10 for lack of
7 information or knowledge sufficient to form a belief as to their truth or falsity.
8

9 11. Denies the allegations of paragraph 11 for lack of information or
10 knowledge sufficient to form a belief as to their truth or falsity.
11

12 12. Denies the allegations of paragraph 12 for lack of information or
13 knowledge sufficient to form a belief as to their truth or falsity.
14

15 13. Denies the allegations of paragraph 13 for lack of information or
16 knowledge sufficient to form a belief as to their truth or falsity.
17

18 14. Denies the allegations of paragraph 14 for lack of information or
19 knowledge sufficient to form a belief as to their truth or falsity.
20

21 15. Denies the allegations of paragraph 15 for lack of information or
22 knowledge sufficient to form a belief as to their truth or falsity.
23

24 16. Denies the allegations of paragraph 16 for lack of information or
25 knowledge sufficient to form a belief as to their truth or falsity.
26

27 17. Admits that Giga Watt Inc. had facilities in Wenatchee, WA, but
28 otherwise deny the allegations of paragraph 17 for lack of information or knowledge
29 sufficient to form a belief as to their truth or falsity.
30

1 18. Admits that Giga Watt Pte., Ltd., sold WTT Tokens that represented the
 2 right to accommodate one watt's worth of mining equipment power consumption at
 3 Giga Watt, Inc.'s processing center rent free for 50 years, but otherwise deny the
 4 allegations of paragraph 18 for lack of information or knowledge sufficient to form a
 5 belief as to their truth or falsity.

6 19. Admits that Cryptonomos Inc. created informational materials for Giga
 7 Watt Pte., Ltd., that included a "White Paper," but otherwise denies the allegations of
 8 paragraph 19 for lack of information or knowledge sufficient to form a belief as to
 9 their truth or falsity.

10 20. States that the "White Paper" speaks for itself and otherwise denies the
 11 allegations of paragraph 20.

12 21. Admits that Perkins Coie LLP and Ness were retained to provide limited
 13 legal services to Cryptonomos Pte., Ltd. and to Giga Watt Pte., Ltd.; admits that
 14 Perkins Coie LLP held certain funds in its IOLTA Trust Account for the benefit of its
 15 client Giga Watt Pte., Ltd.; but otherwise denies the allegations of paragraph 21.

16 22. Admits that Cryptonomos Pte., Ltd., and Giga Watt Pte., Ltd., retained
 17 Perkins Coie LLP to provide certain limited legal services; admits that Lowell Ness
 18 was involved in providing services to both Cryptonomos Pte., Ltd., and Giga Watt
 19 Pte., Ltd.; admits that Cryptonomos Pte., Ltd., provided certain marketing and
 20 advisory services to Giga Watt Pte., Ltd., with regard to the sale of WTT Tokens; but
 21 otherwise denies the allegations of paragraph 22 for lack of information or knowledge
 22 sufficient to form a belief as to their truth or falsity.

ANSWER - 4

1 23. Admits that Cryptonomos listed Perkins Coie LLP and Ness as one of its
 2 legal advisors on a company website, denies that Perkins agreed that its name could be
 3 used as a part of efforts to market WTT Tokens, and otherwise denies the allegations
 4 of paragraph 23 for lack of information or knowledge sufficient to form a belief as to
 5 their truth or falsity.

7 24. Denies that WTT Tokens could be purchased through the White Paper
 8 and otherwise denies the allegations of paragraph 24 for lack of information or
 9 knowledge sufficient to form a belief as to their truth or falsity.

11 25. Denies that Perkins held funds “in escrow,” denies that Perkins had any
 12 contact with or duty to purchasers in a “secondary market,” and otherwise denies the
 13 allegations of paragraph 25 for lack of information or knowledge sufficient to form a
 14 belief as to their truth or falsity.

15 26. Denies the allegations of paragraph 26 for lack of information or
 16 knowledge sufficient to form a belief as to their truth or falsity.

18 27. Admits that Giga Watt, Inc., filed a petition in bankruptcy in the Eastern
 19 District of Washington, admits that a trustee was appointed in that bankruptcy, but
 20 otherwise denies the allegations of paragraph 27 for lack of information or knowledge
 21 sufficient to form a belief as to their truth or falsity.

22 28. Admits that as of August 4, 2017, Perkins Coie LLP held approximately
 23 \$22.4 million in its IOLTA Trust Account for the benefit of its client Giga Watt Pte.,
 24 Ltd., admits that Perkins Coie LLP was instructed to make numerous refunds from its
 25 IOLTA Trust Account and did so, admits that Perkins Coie LLP made four

1 distributions to Giga Watt Pte., Ltd., totaling approximately \$10.8 million, and admits
2 that Perkins Coie LLP made four distributions totaling approximately \$10.8 million to
3 Giga Watt, Inc., at the instruction of Giga Watt Pte., Ltd., but otherwise denies the
4 allegations of paragraph 28.

5 29. Denies the allegations of paragraph 29 for lack of information or
6 knowledge sufficient to form a belief as to their truth or falsity.

7 30. Denies the allegations of paragraph 30.

8 31. Paragraph 31 purports to summarize the relief sought by Plaintiff and
9 thus requires no response but, to the extent any response is required, Perkins denies
10 the allegations of paragraph 31.

11 32. Paragraph 32 purports to summarize the relief sought by Plaintiff and
12 thus requires no response but, to the extent any response is required, Perkins denies
13 the allegations of paragraph 32.

14 33. Denies the allegations of paragraph 33 for lack of information or
15 knowledge sufficient to form a belief as to their truth or falsity.

16 34. Denies the allegations of paragraph 34, including all subparagraphs (a)
17 through (g).

18 35. Denies the allegations of paragraph 35.

19 36. Denies the allegations of paragraph 36, except denies for lack of
20 sufficient information or knowledge the allegations regarding class counsel's
21 experience.

22 37. Denies the allegations of paragraph 37.

1 38. Denies any allegation that Perkins acted wrongfully or negligently, but
2 otherwise denies the allegations of paragraph 38 for lack of information or knowledge
3 sufficient to form a belief as to their truth or falsity.

5 39. Realleges and incorporates its answers to paragraphs 1-38, *supra*, in
6 response to paragraph 39.

7 40. Admits that Perkins Coie LLP and Ness understood that they would be
8 listed as legal advisors to Cryptonomos on its website, but denies the remaining
9 allegations of paragraph 40, and specifically denies that they agreed that their names
10 could be used to market WTT Tokens.

12 41. Admits that Perkins Coie LLP received and held certain proceeds of Giga
13 Watt Pte., Ltd.’s sale of WTT Tokens in its IOLTA Trust Account; admits that it
14 understood that it was to hold the proceeds in said account until it was informed that
15 the transactions had closed by issuance of WTT Tokens to the respective purchasers;
16 but denies the other allegations in paragraph 41.

18 42. Denies that Perkins made any “offer” which was or could be accepted by
19 token purchasers and denies the other allegations of paragraph 42 for lack of
20 information or knowledge sufficient to form a belief as to their truth or falsity.

21 43. Denies the allegations of paragraph 43.

22 44. Denies that Perkins owed or breached any fiduciary duty to holders of
23 WTT Tokens, but otherwise denies the allegations of paragraph 44 for lack of
24 information or knowledge sufficient to form a belief as to their truth or falsity.

26 45. Denies the allegations of paragraph 45.

1 46. Realleges and incorporates by reference its answers to paragraphs 1-38
2 and 40-42, *supra*, in response to paragraph 46.
3

4 47. Denies the allegations of paragraph 47.
5

6 48. Denies the allegations of paragraph 48.
7

8 49. Denies the allegations of paragraph 49.
9

10 50. Denies the allegations of paragraph 50.
11

12 51. Realleges and incorporates by reference its answers to paragraphs 1-38
13 and 40-42, *supra*, in response to paragraph 51.
14

15 52. Admits that Perkins Coie LLP agreed that it would hold certain proceeds
16 of Giga Watt Pte., Ltd.'s sale of WTT Tokens in an IOLTA Trust Account for the
17 benefit of its client Giga Watt Pte., Ltd., until it was informed that the transactions had
18 closed by issuance of WTT Tokens to the respective purchasers, but denies any other
19 allegation in paragraph 52.
20

21 53. Denies the allegations of paragraph 53.
22

23 54. Denies the allegations of paragraph 54.
24

25 55. Denies the allegations of paragraph 55.
26

27 56. Realleges and incorporates by reference its answer to paragraphs 1-38,
28 40-45, and 47-55 in response to paragraph 56.
29

30 57. Paragraph 57 purports to summarize certain statutory provisions and thus
31 requires no response but, to the extent any response is required, Perkins states that
32 RCW 19.86.020 speaks for itself.
33

1 58. Admits that the acts of Ness were within the scope of his employment,
2 admits that Perkins Coie LLP has some policies and procedures with respect to the
3 practice of the firm, but otherwise denies the allegations of paragraph 58.
4

5 59. Denies the allegations of paragraph 59.
6

7 60. Denies the allegations of paragraph 60.
8

9 61. Admits that Perkins Coie LLP received and held certain proceeds from
10 sales of WTT Tokens in an IOLTA Trust Account for the benefit of its client Giga
11 Watt Pte., Ltd., but otherwise denies the allegations of paragraph 61.
12

13 62. Admits that Perkins Coie LLP made distributions of sale proceeds from
14 its IOLTA Trust Account in accordance with instructions from its client Giga Watt
15 Pte., Ltd., that sales transactions had closed by the issuance of various installments of
16 WTT Tokens, admits that it eventually distributed all of the proceeds of sales of WTT
17 Tokens that were in its IOLTA Trust Account, but denies any other allegations in
18 paragraph 62.
19

20 63. Admits that Perkins had no direct communications with token holders of
21 WTT Tokens, but otherwise denies the allegations of paragraph 63.
22

23 64. Denies the allegations of paragraph 64.
24

25 65. Denies the allegations of paragraph 65.
26

27 66. Admits that law firms and lawyers are regulated by a state bar
28 association, admits that lawyers at Perkins Coie LLP are licensed to practice law in
29 various jurisdictions, admits that lawyers are exempt from escrow agent registration
30 and bonding requirements, admits that Lowell Ness has a web page that describes his
31

1 practice and position, which speaks for itself, but otherwise denies the allegations of
2 paragraph 66.
3

4 67. Denies the allegations of paragraph 67.
5 68. Denies the allegations of paragraph 68.
6 69. Denies the allegations of paragraph 69.
7 70. Paragraph 70 states a conclusion of law and thus no response is required
8 but, to the extent any response is required, denies the allegations of paragraph 70.
9

10 71. Denies the allegations of paragraph 71.
11 72. Paragraph 72 purports to summarize the relief sought by the Plaintiff and
12 thus no response is required but, to the extent any response is required, Perkins denies
13 the allegations of paragraph 72.
14

15 73. Realleges and incorporates by reference its answers to paragraphs 1-38,
16 40-45, 47-55 and 58-69 in response to paragraph 73.
17

18 74. Paragraph 74 states a conclusion of law and thus, no response is required
19 but, to the extent any response is required, Perkins denies the allegations of paragraph
20 74.
21

22 75. Paragraph 75 states a conclusion of law and thus, no response is required
23 but, to the extent any response is required, Perkins denies the allegations of paragraph
24 75.
25

26 76. Denies the allegations of paragraph 76.

ANSWER - 10

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1 77. Paragraph 77 states a legal conclusion and thus, no response is required
2 but, to the extent any response is required, Perkins denies the allegations of paragraph
3
4 77.

5 78. Paragraph 78 states a legal conclusion and thus, no response is required
6 but, to the extent any response is required, Perkins denies the allegations of paragraph
7
8 78.

9 79. Denies the allegations of paragraph 79.

10 80. Denies the allegations of paragraph 80.

11 **II. AFFIRMATIVE DEFENSES**

12 By way of further answer, and as affirmative defenses, Perkins hereby alleges
13 as follows:

14 1. Arbitration. Under the facts and theories alleged in the Amended
15 Complaint, Plaintiff and the purported class members are parties to a contract which
16 broadly provides that any dispute regarding token purchases and the incorporated
17 “escrow” will be arbitrated before the Singapore International Arbitration Centre in
18 Singapore. Perkins hereby demands that claims asserted in the Class Action
19 Complaint be arbitrated and does not waive the right to such arbitration by filing this
20 Answer and Affirmative Defenses.

22 2. Waiver. Plaintiff and each purported class member have contractually
23 waived the right to bring claims in a representative capacity or as a class action.
24 Plaintiff and each purported class member have also contractually waived the right to
25 pursue or recover consequential damages.

1 3. Venue. Plaintiff and each purported class member have agreed that all
 2 claims relating to their alleged purchasing of WTT Tokens will be brought in a
 3 different venue.
 4

5 4. Failure to State a Claim. The Class Action Complaint, in whole or in
 6 part, fails to state a claim against Perkins upon which relief can be granted.
 7

8 5. Standing/Real Party in Interest. To the extent that Plaintiff or purported
 9 class members did not purchase WTT Tokens from Giga Watt Pte., Ltd., via a WTT
 10 Token Purchase Agreement, they lack standing to enforce the terms of the alleged
 11 “escrow” agreement.
 12

13 6. Allocation of Fault. Plaintiff’s losses and/or damages, and the losses
 14 and/or damages of each purported class member, if any, were caused in whole or in
 15 part by their own comparative fault and/or fault on the part of other parties and non-
 16 parties. Any non-parties will be identified following relevant discovery. Any fault on
 17 the part of Perkins must, therefore, be reduced in proportion to the fault of other
 18 parties and non-parties.
 19

20 7. Intentionally Caused Harm. Plaintiff’s injuries and damages, and the
 21 alleged injuries and damages of each purported class member, in whole or in part,
 22 were caused by the intentional culpable conduct of others. Damages caused by
 23 intentional tortfeasors cannot be mixed with or recovered from negligent or “at fault”
 24 actors. Accordingly, all damages of Plaintiff and/or purported class members caused
 25 by the intentional conduct of others, including the intentional conduct of any parties
 26

and non-parties, must be segregated and may not be apportioned to any “at fault” parties such as Perkins.

8. Statute of Limitations. The claims asserted by Plaintiff and/or by each purported class member are time-barred in whole or in part under applicable statutes of limitations.

9. Failure to Mitigate. Plaintiff, and each purported class member, have failed to take reasonable steps to mitigate their alleged damages.

10. Lack of Personal Jurisdiction. This Court lacks personal jurisdiction over Lowell Ness.

11. Improper Class Action. Plaintiff's claims, and each of them, brought on behalf of himself and the putative members of the purported class as set forth in the Complaint, cannot and should not be maintained on a class-action or representative action basis because those claims, and each of them, fail to meet the necessary requirements for class certification, including, *inter alia*, class ascertainability, typicality, commonality, numerosity, manageability, superiority, adequacy of the class representative, and lack of a community of interest among the putative class.

III. PRAYER FOR RELIEF

Accordingly, having fully answered the Class Action Complaint, Perkins hereby requests that the Court grant the following relief:

A. That the Court order the parties to arbitrate the claims asserted in the Class Action Complaint and stay this action pending the outcome of that arbitration;

B. That the Court deny Plaintiff's request to certify a class;

1 C. That Plaintiff and/or each purported class member recover nothing from
2 Perkins on the claims asserted in the Class Action Complaint;

3 D. That all claims asserted in the Class Action Complaint be dismissed with
4 prejudice;

5 E. That Perkins recovers from Plaintiff its reasonable costs and fees incurred
6 in defending the claims asserted in the Class Action Complaint; and

7 F. Such other legal or equitable relief as Perkins may prove entitlement to or
8 which the Court deems appropriate and just.

9
10 DATED this 1st day of March, 2021.

11 By /s/ Bradley S. Keller

12 Bradley S. Keller, WSBA #10665

13 By /s/ Ralph E. Cromwell, Jr.

14 Ralph E. Cromwell, Jr., WSBA #11784

15 By /s/ Jofrey M. McWilliam

16 Jofrey M. McWilliam, WSBA #28441

17 *Attorneys for Defendants*

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of March, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF for the foregoing specifically identifies recipients of electronic notice.

By /s/ Ralph E. Cromwell, Jr.

Ralph E. Cromwell, Jr.

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